



## MEMORANDUM

GOE

AGENDA ITEM NO. 2 (AA)

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**TO:** Honorable Chairperson Barbara Carey-Shuler, Ed.D.  
Members, Board of County Commissioners

**DATE:** September 16, 2003

**FROM:** George M. Burgess  
County Manager

**SUBJECT:** Resolution Authorizing County Manager to Execute Short Form Consent Order with Florida Department of Environmental Protection (FDEP) Resolving Alleged Violation of FDEP Air Rules at Resources Recovery Facility (RRF) by Payment of a Total of \$5,250 for Penalties and Administrative Costs and Authorizing County Manager to Execute Any Future Consent Orders Related to Carbon Monoxide (CO) Violations at the RRF Stipulating Penalties of Up to \$10,000 per Violation Plus Customary Agency Administrative Costs

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### RECOMMENDATION:

It is recommended that the Board approve and authorize the County Manager to execute the attached short form Consent Order with the Florida Department of Environmental Protection (FDEP) related to a violation of the Carbon Monoxide (CO) emission standard at the Resources Recovery Facility that was documented on January 27, 2003. The recommended settlement is made via payment to FDEP of \$5,250.00 in penalties and administrative costs. Further, it is recommended that the Board approve and authorize the County Manager to execute any future Consent Orders to resolve alleged CO violations stipulating penalties of up to \$10,000.00 per violation, plus customary agency administrative costs.

### BACKGROUND

The Federal Clean Air Act authorized the promulgation and implementation of the New Source Performance Standards (NSPS). These standards established emission levels, control equipment, and operating practices for Waste-to Energy Plants and landfills, effective December, 2000.

The Resources Recovery Facility (RRF), the County's Waste-to-Energy plant, which is operated by Montenay Power Corporation, is subject to a Carbon Monoxide (CO) Standard of 200 parts per million (ppm) expressed as a daily average. The County funded retrofit of the RRF to control emissions to the levels specified in the NSPS. The retrofit has achieved 100 percent compliance with the emission standards, except CO. CO is a very complex emission to control and is influenced by a number of variables. Unlike other emissions regulated under the NSPS, it cannot be controlled by using a post-combustion control device. It is controlled by precisely managing combustion and, if necessary,

To: Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
Members, Board of County Commissioners

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burning propane as an auxiliary fuel to regulate combustion temperature. Combustion is affected by fuel moisture, fuel quality, temperature, and a host of other variables. Since the fuel used at RRF is derived from Municipal Solid Waste, its moisture and quality can vary significantly, both daily and on seasonal bases, dependant upon weather conditions. This makes the precise control of combustion difficult. During the last fiscal year, the RRF achieved 99.4 percent compliance with the CO standard. Thus far in 2003, the RRF has achieved 99.5 percent compliance with the standard. Even at this level of compliance, additional violations of the standard could occur this year and in future years. Resolution of violations of FDEP rules is made through Consent Orders.

On January 27, 2003, an average daily emission level for CO of 342 ppm was recorded at the RRF, which exceeds the 200 ppm standard, thus placing the facility in violation of the Clean Air Act. As has been the practice, resolution of this violation is through a short form Consent Order and a \$5,250.00 payment, \$5,000.00 of which is for penalties and \$250.00 is for FDEP's administrative costs.

  
\_\_\_\_\_  
Assistant County Manager  
*Pedro G. Hernandez*



# MEMORANDUM

(Revised)

**TO:** Hon. Chairperson Barbara Carey-Shuler, Ed.D.  
and Members, Board of County Commissioners

**DATE:** October 7, 2003

**FROM:** Robert A. Ginsburg  
County Attorney

**SUBJECT:** Agenda Item No.

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MANAGER TO EXECUTE A SHORT FORM CONSENT ORDER WITH FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION RESOLVING ALLEGED VIOLATION OF DEPARTMENT AIR RULES AT THE RESOURCES RECOVERY FACILITY BY PAYMENT OF A TOTAL OF \$5,250.00 FOR PENALTIES AND ADMINISTRATIVE COSTS AND AUTHORIZING THE COUNTY MANAGER TO EXECUTE ANY FUTURE CONSENT ORDERS RELATED TO CARBON MONOXIDE (CO) VIOLATIONS AT THE RESOURCES RECOVERY FACILITY STIPULATING PENALTIES OF UP TO \$10,000.00 PER VIOLATION PLUS CUSTOMARY AGENCY ADMINISTRATIVE COSTS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the County Manager to execute a short form Consent Order in substantially the form attached hereto on behalf of Miami-Dade County for the resolution of alleged violation of Florida Department of Environmental Regulation Air Rules; and to pay \$5,250.00 to the Florida Department of Environmental Protection in penalties and administrative costs to resolve an alleged Carbon Monoxide emission violation occurring on January 27, 2003 at the Resources Recovery Facility; and authorizing the County Manager to execute any future consent orders related to Carbon Monoxide (CO) violations at the Resources Recovery Facility stipulating penalties of up to \$10,000.00 per violation

plus customary agency administrative costs.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who  
moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and  
and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson  
Katy Sorenson, Vice Chairperson

Bruno A. Barreiro  
Betty T. Ferguson  
Joe A. Martinez  
Dennis C. Moss  
Natacha Seijas


Jose "Pepe" Diaz  
Sally A. Heyman  
Jimmy L. Morales  
Dorrin D. Rolle  
Rebeca Sosa

Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 7<sup>th</sup> day  
of October, 2003. This resolution shall become effective ten (10) days after the date of its  
adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an  
override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency. 

By: \_\_\_\_\_  
Deputy Clerk



Jeb Bush  
Governor

# Department of Environmental Protection

Southeast District  
400 N. Congress Ave. Suite 200  
West Palm Beach, Florida 33401

RECEIVED  
MAY 14 2003  
Environmental  
Compliance Division

David B. Struhs  
Secretary

CERTIFIED MAIL #7001 2510 0006 1575 5634  
RETURN RECEIPT REQUESTED

Lee Casey, Chief  
Environmental Compliance Division  
Miami-Dade Solid Waste Management  
8675 NW 53<sup>rd</sup> Street  
Miami, FL 33166

Re: Proposed Settlement by Short Form Consent Order in Case of Miami-Dade Solid  
Waste Management, OGC File No. 03-0869

Dear Mr. Casey:

The purpose of this letter is to complete the resolution of the matter previously identified by the Department in the warning letter dated March 6, 2003, a copy of which is attached. The Department finds you are in violation of the rules and statutes cited in the attached warning letter. The corrective actions required to bring your facility into compliance have been performed. In order to resolve the matters identified in the warning letter, you are assessed civil penalties in the amount of \$5000.00, along with \$250.00 to reimburse the Department costs, for a total of \$5250.00. The Department acknowledges that the payment of these civil penalties does not constitute an admission of liability. This payment must be made payable to the Department of Environmental Protection by certified check or money order and shall include the OGC File Number assigned above and the notation "Ecosystem Management & Restoration Trust Fund". Payment shall be sent to the Department of Environmental Protection, Southeast District Office, 400 N. Congress Ave., Suite 200, West Palm Beach, Florida 33401 within 15 days of your signing this letter.

Your signing of this letter constitutes your acceptance of the Department's offer to resolve this matter on these terms. If you elect to sign this letter, please return it to the Department at the address indicated above. The Department will then countersign the letter and file it with the Clerk of the Department. When the signed letter is filed with the Clerk, the letter shall constitute final agency action of the Department which shall be enforceable pursuant to Sections 120.69 and 403.121, Florida Statutes.


If you do not sign and return this letter to the Department at the District address given above by **June 21, 2003**, the Department will assume that you are not interested in settling this matter on the above described terms, and will proceed accordingly.

"More Protection, Less Process"

Printed on recycled paper.

None of your rights or substantial interests are determined by this letter unless you sign it and it is filed with the Department Clerk.

Sincerely,

 5/8/03  
John F. Moulton III Date  
Assistant Director of District Management  
Department of Environmental Protection  
Southeast District Office

JFM:TT:rh  
*rh*

cc: Air Enforcement Files, DEP, West Palm Beach

I, **George M. Burgess**, on behalf of **Miami-Dade County**, HEREBY ACCEPT  
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE

For Miami-Dade Solid Waste Mgmt.: For the Department:

\_\_\_\_\_  
**George M. Burgess**  
**County Manager**

\_\_\_\_\_  
**John F. Moulton III**  
Assistant Director of District Management  
Department of Environmental Protection  
Southeast District Office

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 2003 in West Palm Beach, Florida.

FILING AND ACKNOWLEDGMENT FILED, on this date, pursuant to  
§120.52 Florida Statutes, with the designated Department Clerk,  
receipt of which is hereby acknowledged.

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date

Attachments: Warning Letter WL03-0001AS13SED  
Notice of Rights

7



Jeb Bush  
Governor

# Department of Environmental Protection

Southeast District  
P.O. Box 15425  
West Palm Beach, Florida 33416

# FILE

David B. Struhs  
Secretary

March 6, 2003

ELECTRONIC MAIL  
[LE1@miamidade.gov](mailto:LE1@miamidade.gov)

WARNING LETTER  
WL03-0001AS13SED  
AP – Miami-Dade County

Lee Casey, Chief  
Environmental Compliance Division  
Miami-Dade Solid Waste Management  
8675 NW 53<sup>rd</sup> Street, Suite 201  
Miami, FL 33166

Subject: Carbon Monoxide (CO) Emission at Montenay RRF

Dear Mr. Casey:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A review of information submitted to the Department on January 28, 2003 indicates that a violation of Florida Statutes and Rules may have occurred at the above described facility. The submitted information showed Unit 2 experienced excess CO emissions of 342 ppm on January 27, 2003.

Section 403.161 (1)(b), Florida Statutes, provides that it is a violation to fail to comply with any rule, regulation, order, permit or certification adopted or issued by the Department pursuant to its lawful authority. It is a violation of Specific Condition B.36. of permit 0250348-004-AV and Rule 62-204.800(8)(b)3.i. for CO emissions to exceed 200 ppmvd @ 7% O<sub>2</sub>.

The above incident, and any other activities at your facility that may be contributing to violations of the above described statutes and rules, should be ceased immediately. Continued activity in violation of state statutes or rules may result in liability for damages and restoration. In accordance with the August 12, 1997 Department's "Settlement Guidelines for Civil Penalties", and based on the Department's Environmental Legislative Reform Act, the penalty which would currently be proposed in this case is \$5000.00 plus \$250.00 for the Department's costs & expenses.

You are requested to contact Rich Hofmann or Laxmana Tallam of this office at 561-681-6622 or 681-6632 within 15 days of receipt of this Warning Letter to arrange a meeting with Department personnel to discuss this matter. The Department is interested

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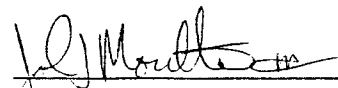


Miami-Dade SWM  
WL02-0001AS13SED  
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in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel may help resolve this matter.

PLEASE BE ADVISED that this Warning Letter is part of an agency investigation preliminary to agency action in accordance with Section 120.57(4), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,

 3/6/03  
\_\_\_\_\_  
Melissa L. Meeker                      Date  
Director of District Management  
Southeast District

MLM:TT:rh

cc: Dianne Spingler, DARM, DEP, Tallahassee (Dianne.Spingler@dep.state.fl.us)  
Air Enforcement Files, DEP, West Palm Beach

## NOTICE OF RIGHTS

The Department's proposed agency action will become final upon signature unless a timely petition for an administrative hearing is filed pursuant to sections 120.569 and 120.57 F.S., before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the proposed agency action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida, 32399-3000. Petitions filed by the permit applicant or any of the parties listed below must be filed within twenty-one days of receipt of this notice of intent. Petitions filed by any persons other than those entitled to written notice under section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the public notice or within twenty-one days of receipt of this notice, whichever occurs first. Under section 120.60(3), however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of that notice, regardless of the date of publication. A petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention will be only at the approval of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner, the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of how and when petitioner received notice of the agency action or proposed action;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts upon which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by rule 28-106.301

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

#### NOTICE OF APPEAL RIGHTS

Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida rules of Appellate Procedure with the clerk of the Department of Environmental Protection in the Office of General Counsel, Mail Station 35, 3900 Commonwealth boulevard, Tallahassee, Florida, 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within thirty days after this order is filed with the clerk of the Department.